

Senate Bill No. 303

Passed the Senate September 7, 2005

Secretary of the Senate

Passed the Assembly September 1, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 24.5 (commencing with Section 78801) to Part 2 of Division 22 of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 303, Chesbro. The Mendocino Winegrape and Wine Commission.

Existing law provides for various commissions to promote the production and marketing of agricultural commodities.

This bill would create the Mendocino County Winegrape and Wine Commission in state government to be composed of 6 producers who are not vintners, 4 vintners, and one public member, elected or appointed to 2-year terms, as specified. This bill would provide that the Secretary of Food and Agriculture may require the commission to correct or cease any function or activity he or she determines is not in the public interest or that is in violation of these provisions upon service of a written notice.

This bill would provide for approval of these provisions in a referendum conducted as specified. This bill would provide that, prior to the beginning of each marketing season, the commission shall establish assessment rates for producers based upon the number of tons of winegrapes delivered to vintners, and on vintners based upon the number of tons of winegrapes processed and marketed, as applicable, and authorize the expenditure of those funds for the purposes of carrying out these provisions, thereby making an appropriation.

This bill would provide that a penalty and interest shall be paid by any person who fails to remit this assessment within the time required by the commission. This bill would require producers and vintners to keep complete and accurate records, as specified. This bill would provide that the commission may commence civil actions to enforce these provisions.

Lastly, this bill would provide that every 5 years, commencing with the 2011-2012 marketing season, upon recommendation by the commission, or upon petition, the secretary may hold a hearing, and subsequently a referendum, to determine whether

the operation of these provisions should be continued, as specified.

Because this bill would create new crimes, the violation of which would be misdemeanors, this bill would impose a state-mandated, local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 24.5 (commencing with Section 78801) is added to Part 2 of Division 22 of the Food and Agricultural Code, to read:

CHAPTER 24.5. MENDOCINO COUNTY WINEGRAPE AND WINE
COMMISSION

Article 1. Declarations and General Provisions

78801. The production and distribution of winegrapes and wine in Mendocino County constitute important industries that provide substantial and necessary revenues for the county and state, and employment for citizens of the state. It also furnishes an important food product that benefits the public health and welfare.

78802. The maintenance and expansion of the winegrape and wine industries of Mendocino County and of its local, national, and foreign markets is necessary to assure the consuming public of a continuous supply of these products and needed levels of income for those engaged in the winegrape and wine industries in Mendocino County.

78803. Opportunity exists for continued growth and expansion of the Mendocino County winegrape and wine industries by creating new markets in the state, the county, and abroad. The success of an expansion program is uniquely

depending upon effective education, advertising, promotion, and research, since the creation of new markets is essentially a matter of educating and informing people of the use and availability of the commodity. The expansion of the Mendocino County winegrape and wine industries also provides an important source of jobs for many people in the area, and serves to ensure the preservation of an agrarian society.

78804. The production of winegrapes, wine, and winegrape products in Mendocino County has the potential to be one of the leading segments of the state's winegrape and wine industries. To realize this potential, there is a need to make consumers aware of the high quality of winegrapes, wine, and winegrape products produced in Mendocino County. The activities made possible by the establishment of the commission will meet this need and further the interests of the industries and the state.

78805. The Mendocino County winegrape and wine industries have enjoyed much success due to a commitment by the industries to fund research that has led to significant improvements in the quality and variety of winegrapes and wine available to consumers. It has also led to winegrapes and wine being a better consumer value. The establishment of the commission will continue to enhance this research effort and move the Mendocino County winegrape and wine industries toward its potential, resulting in increased consumer value and enhanced returns to growers and vintners.

78806. The production and marketing of winegrapes, wine, and winegrape products produced in Mendocino County is hereby declared to be of public interest, therefore it is necessary and appropriate that these provisions be specifically applicable to Mendocino County. This chapter is enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

78807. (a) It shall be the policy of this state to preserve and encourage agricultural activities in the state, promote consumption of agricultural commodities produced and harvested in California, provide for research, governance, and accountability, including the ability for agriculture to act collectively and to assess itself through the process of referenda.

(b) It shall also be the policy of this state that the program authorized in this chapter shall engage in activities that are not

more extensive in scope than is necessary to accomplish its purposes, and that the powers and duties of this program are designed to directly and materially advance the state's interest in a stable, thriving agricultural industry. Further, this policy can be implemented most effectively by the collective actions authorized in this chapter while not preventing individuals from additionally engaging in self-help activities.

78808. No action taken by the commission, or by any individual in accordance with this chapter or with the regulations adopted under this chapter, is a violation of the Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code, the Unfair Practices Act, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code, or any statutory or common law against monopolies or combinations in restraint of trade. Proof that any action complained of was done in compliance with this chapter shall be a complete defense to the action or proceeding. The Legislature intends this program to be among those contemplated by Congress in the enactment of Section 610(i) of Title 7 of the United States Code.

78809. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production of winegrapes, wine, and other winegrape products in Mendocino County the opportunity to avail themselves of the benefits of collective action in the broad fields of development, maintenance, and expansion of markets, production, marketing, processing, and health-related research, public and trade education, and advertising and promotion necessary to achieve the purposes stated herein.

78810. This chapter shall be liberally construed. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

78811. It is hereby declared as a matter of legislative determination that members of the commission are intended to represent and further the interest of the particular agricultural industry concerned and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature

finds that, with respect to persons who are elected or appointed to the commission, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

Article 2. Definitions

78821. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

78822. “Books and records” means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

78823. “Brandy” means an alcoholic distillate or a mixture of distillates obtained from the fermented juice, mash, or wine of whole, sound, ripe grapes or from the residue thereof, distilled at not over 170 degrees proof.

78824. “Commission” means the Mendocino Winegrape and Wine Commission.

78825. “Department” means the Department of Food and Agriculture.

78826. “Grape concentrate” or “concentrate” means unfermented grape juice from which the major portion of the original water content has been removed.

78827. “Grape juice” or “juice” means unfermented crushed grapes without solids containing the major portion of the original water content.

78828. “Ex officio member” means a nonvoting member of the commission.

78829. “High proof” means an alcoholic distillate or a mixture of distillates obtained from the fermented juice, mash, or wine of fresh winegrapes or from the residue thereof.

78830. “Market” means to sell, barter, trade, purchase, acquire, or otherwise distribute wine, winegrapes, or winegrape products.

78831. “Market development” includes, but is not limited to, trade, promotion, public education, dissemination of information on health and social issues, and other matters, and activities for the prevention, modification, or removal of trade barriers that restrict the free flow of winegrapes, wine, or winegrape products

to market and may include, but is not limited to, the presentation of facts to local, state, federal, or foreign governmental agencies on matters that affect this chapter.

78832. “Market research” means any investigation, development, analysis, or implementation of information relating to the marketing of winegrapes, wine, and winegrape products including, but not limited to, trade practices, consumer trends, promotion, sales, and advertising.

78833. “Marketing season” or “fiscal year” means the period beginning July 1 of any year and extending through June 30 of the following year.

78834. “Must” means a mixture of unfermented crushed grapes, solid grape particles, and grape juice.

78835. “Person” means any individual, firm, partnership, corporation, limited liability company, association, or any other business entity.

78835.5. “Process” or “processed” means producing must, grape juice, grape concentrate, wine, or other winegrape products, including high proof and brandy from winegrapes.

78836. “Producer” or “grower” means any person who is engaged within Mendocino County in the business of producing, or causing to be produced, winegrapes for market. Producer also includes any person who receives winegrapes as a payment for the use of his or her property in the production of winegrapes.

78837. “Production research” means research relating to the production and processing of winegrapes, including, but not limited to, the development of new winegrape products and uses for these products.

78838. “Secretary” means the Secretary of Food and Agriculture.

78839. “Vintner” and “processor” are synonymous and, except as otherwise specifically provided in this chapter, mean any person engaged in Mendocino County in producing must, grape juice, grape concentrate, wine, or other winegrape products, including high proof and brandy, and includes a “winegrower” in Mendocino County as that term is defined in Section 23013 of the Business and Professions Code, who produces wine from winegrapes. However, a producer does not become a vintner solely by the act of field crushing winegrapes before delivering the winegrapes as must to another person.

78840. “Wine” means the product obtained by the fermentation of winegrapes or juice therefrom, with or without addition or abstracting, and includes any product made from winegrapes that is defined as a wine and permitted under Part III (commencing with Section 5381) of Subchapter E of Chapter 51 of Title 26 of the United States Code, and in the statutes of this state and regulations issued thereunder defining wine produced from grapes.

78841. “Winegrapes” means grapes produced in Mendocino County that are intended to be converted from their fresh form into grape juice, grape concentrate, wine, or products thereof, including, but not limited to, high proof brandy produced from winegrapes.

78842. “Winegrape products” include, but are not limited to, must, grape juice, grape concentrate, wine, high proof, and brandy produced from winegrapes.

Article 3. The Mendocino Winegrape and Wine Commission

78851. (a) There is in the state government the Mendocino Winegrape and Wine Commission. The commission shall be composed of six producers who are not vintners, four vintners, and one public member.

(b) The public member and his or her alternate shall be appointed to the commission by the secretary from nominees recommended by the commission.

(c) The secretary shall be a nonvoting, ex officio member of the commission.

78852. (a) The secretary may require the commission to correct or cease any existing activity or function that is determined by the secretary not to be in the public interest or that is in violation of this chapter.

(b) If the commission refuses or fails to cease those activities or functions or to make the corrections as required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities or functions of the commission until the time that the cessation or correction of activities or functions as required by the secretary has been accomplished by the committee.

(c) Actions of the commission in violation of the written notice are without legal force or effect. The secretary, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions that are the subject of the written notice.

(d) Upon service of the written notice, the secretary shall notify the commission in writing of the specific acts that the secretary determines are not in the public interest or are in violation of this chapter, his or her reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and recommendations that will make the activities or functions acceptable.

78853. The commission or secretary may bring an action for judicial relief from the secretary's written notice, or from noncompliance by the commission with the written notice, as the case may be, in a court of competent jurisdiction, that may issue a temporary restraining order, permanent injunction, or other applicable relief.

78854. When the secretary is required to concur in a decision of the commission, the secretary shall give his or her response to the commission within 15 working days from notification of the decision. The secretary's response may be a requirement that additional information be provided.

78855. The commission shall reimburse the secretary for all expenditures incurred in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the secretary acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for payment of the secretary's legal costs with regard to the that action.

78856. Each member, except the ex officio members, shall have an alternate member selected by the member, subject to approval by the commission. An alternate shall, in the absence of the member for whom he or she is an alternate, serve in place of the member and shall have and be able to exercise all the rights, privileges, and powers of the member when serving on the commission. In the event of a change in status making a member ineligible to serve, or due to death, removal, resignation, or disqualification, of a member, the alternate shall act as a member

of the commission until a qualified successor is elected or appointed.

78857. Any individual serving as a producer member and his or her alternate member shall be a producer who is not also a vintner, or a management-level employee or representative of a producer who is not also a vintner, who has a financial interest in producing, or causing to be produced, winegrapes for market. The qualifications of producer members and alternate members shall be maintained during the entire term of office. No more than one member and his or her alternate member shall be employed by, represent, or be connected in a proprietary capacity with the same producer. However, producer membership in an agricultural nonprofit cooperative association or trade organization shall not be considered employment or being in a proprietary capacity.

78858. Any individual serving as a vintner member and his or her alternate member shall be a vintner, or a management-level employee or representative of a vintner, who has a financial interest in producing winegrapes for market. The qualifications of vintner members and alternate members shall be maintained during the entire term of office. No more than one member and his or her alternate member shall be employed by, represent, or be connected in a proprietary capacity with the same vintner. However, vintner membership in an agricultural nonprofit cooperative association or trade organization shall not be considered employment or being in a proprietary capacity.

78859. The public member and his or alternate member shall have all the rights, privileges, and powers of any other member of the commission. The public member shall not have any financial interest in the winegrape or wine industries.

78860. The term of office of members and alternate members shall be for two years or until their successors have been elected and have qualified. However, of the first members of the commission, a portion of the producer members and their alternate members, and a portion of the vintner members and their alternate members, shall serve for one year so that the terms shall be staggered. The determination of the term of each member and his or her corresponding alternate member shall be made by lot. The commission may establish term limits for

members and alternate members pursuant to procedures established by the commission and concurred in by the secretary.

78861. Not less than six voting members shall constitute a quorum of the commission.

78862. The vote of a majority of the members present at a meeting at which there is a quorum shall constitute an act of the commission.

78863. The commission shall be and is hereby declared and created a corporate body. It shall have the power to sue and be sued, to contract and be contracted with, and to have and possess all of the powers of a corporation. It may adopt a corporate seal. Copies of its proceedings, records, and acts, when authenticated, shall be admissible in evidence in all courts of the state and shall be prima facie evidence of the truth of all statements therein.

78864. The secretary or his or her representatives shall be notified and may attend meetings of the commission and any committee meetings of the commission.

78865. No member or alternate member of the commission, or member of a committee established by the commission who is not a member of the commission, shall receive a salary. Each member of the commission and any alternate member serving in place of his or her member, except ex officio members, and each member of a committee established by the commission who is not a member of the commission, shall receive necessary traveling expenses and meal allowances, as approved by the commission, and may receive an amount not to exceed one hundred dollars (\$100) per day, as established by the commission. This amount shall be paid for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on assignment for the commission, as approved by the commission.

78866. All funds received by the assessments levied pursuant to this chapter or otherwise received by the commission shall be deposited in banks that the commission may designate and shall be disbursed by order of the commission through an agent or agents as it may designate. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the commission, in an amount of not less than twenty-five thousand dollars (\$25,000).

78867. (a) The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission.

(b) No member, alternate member, or any employee or agent of the commission, is personally liable for the contracts of the commission or for errors in judgment, mistakes, or other acts, either of commission or omission, except for their own individual act of dishonesty or crime. Liability is several and not joint, and no member, alternate member, or any employee or agent of the commission is liable individually for the default, act, or omission of any other member, alternate member, or any employee or agent of the commission.

Article 4. Powers and Duties of the Commission

78881. The powers and duties of the commission shall include, but not be limited to, the following:

(a) Elect a chairperson and other officers as it may deem advisable, and delegate duties as may be advisable.

(b) Adopt and from time to time alter, rescind, modify, and amend all proper and necessary rules, procedures, and orders for the exercise of its powers and the performance of its duties, including rules of procedure for appeals from any rule, procedure, or order of the commission.

(c) Administer and enforce this chapter, and do and perform all acts and exercise all powers incidental to or in connection with or deemed reasonably necessary, proper, or advisable to effectuate the purposes of this chapter.

(d) Employ or retain a person to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including private legal counsel of its choice, necessary to carry out this chapter. The commission may fix the compensation for all employees of the commission. The commission may retain a management firm or the staff from any board, commission, or committee of the state or federal government to perform the functions prescribed by this section under the direction of the commission.

(e) Establish offices and incur expenses, and enter into any and all contracts and agreements, and create liabilities and

borrow funds in advance or receipt of assessments as may be necessary, at the discretion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(f) Maintain accurate books, records, and accounts of all its dealings, which shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the secretary. A summary of the audit shall be reported to all persons subject to this chapter, a copy of which shall also be submitted to the department. In addition, the secretary may, as he or she determines necessary, conduct or cause to be conducted a fiscal and compliance audit of the commission.

(g) Present facts to, and negotiate with, local, state, federal, and foreign agencies on matters affecting the winegrape, wine, and winegrape products industries.

(h) Appoint committees composed of both members and nonmembers of the commission.

(i) Promote the sale of winegrapes, wine, and winegrape products by advertising and other similar means for the purpose of maintaining and expanding present markets and creating new and larger intrastate and foreign markets for winegrapes, assess and address the impact of local, state, federal and foreign regulations on the winegrape products industries, and seek the elimination of tariff and nontariff trade barriers.

(j) Educate and instruct the consuming public with respect to winegrapes, wine, and winegrape products, including, but not limited to, the uses, healthful properties and dietetic value of these commodities, and the environmental protection and conservation issues relating to the production of winegrapes.

(k) Educate and instruct the wholesale, food service, and retail trade with respect to proper methods of handling and marketing of winegrapes, wine, and winegrape products, arrange for the performance of merchandising work providing display and other promotional materials, conduct market surveys and analysis, assist local, state, and federal agencies in negotiating with foreign governments regarding issues affecting market access, including, but not limited to, resolving phytosanitary issues, developing shipping protocols, limiting chemical residues, and addressing packaging, labeling, and other issues raised by countries imposing trade barriers on the import of agricultural products

into their markets, and undertake any other similar activities that the commission may determine appropriate for the maintenance and expansion of present markets and the creation of new and larger markets for winegrapes, wine, and winegrape products.

(l) Conduct, and contract with others to conduct, scientific and other research, including the study, analysis, dissemination and accumulation of information obtained from research or elsewhere respecting the production, cultural practices, nutritional and dietetic value, processing, storage, refrigeration, inspection, transportation, marketing and distribution of winegrapes, wine, and winegrape products.

(m) Accept contributions of private, local, state, or federal funds, and make contributions of commission funds, or match contributions, to other persons or to local, state, or federal agencies for purposes of promoting, enhancing and maintaining the Mendocino County winegrape, wine, and winegrape products industries.

(n) Cooperate with governmental or private entities in the resolution of emergencies arising in the industry and impacting the health and safety of the public or the continued stability of the industry.

(o) Collect information, including, but not limited to, industry crop statistics, and publish and distribute without charge, a bulletin or other communication to persons subject to this chapter.

(p) Establish an assessment rate to defray operating costs of the commission.

(q) Establish an annual budget according to generally accepted accounting practices. The budget shall be concurred in by the secretary prior to disbursement of funds, except for disbursements made for the payment of employees.

(r) Submit to the secretary for his or her concurrence an annual statement of contemplated activities authorized pursuant to this chapter.

(s) Keep confidential and not disclose, except when required by a court order after a hearing in a judicial proceeding involving this chapter, all information deemed proprietary or trade secret by the commission. The Legislature finds and declares that this provision is required to ensure that producer and vintner proprietary and trade secret information shall not be disclosed.

The commission shall establish procedures to provide producers and vintners access to communicate with other producers and vintners regarding noncommercial matters affecting the commission so long as the access does not directly or indirectly release proprietary or trade secret information in the possession of the commission.

(t) Investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

(u) Administer any program that is engaged in activities authorized by this chapter upon the request of an authorized agent of the program.

78882. (a) The commission may collect and disseminate to any and all interested parties, vintner market price information based on sales that have occurred in order to prevent unfair trade practices that are detrimental to the Mendocino County winegrape, wine, and winegrape products industries, including, but not limited to, deception and misinformation.

(b) The information reported under this section shall be kept confidential and shall not be made public under any circumstances. Only information that gives industry totals, averages, and other similar data in aggregate, nonindividualized form may be disclosed by the commission. The Legislature finds and declares that this provision is required to ensure that vintner proprietary information shall not be disclosed.

(c) The procedure for the collection and dissemination of information pursuant to this section shall be concurred in by the secretary.

Article 5. Referendum on Implementation of this Chapter

78901. (a) Within 90 days of the effective date of this chapter, the secretary shall establish a list of producers and vintners in Mendocino County eligible to vote on implementation of this chapter. In establishing the list, the secretary may require that all producers and vintners in Mendocino County submit their names and mailing addresses.

(b) The secretary may also require that the information provided include the quantity of winegrapes, wine, or winegrape products produced by each producer and vintner or, in the

alternative, may establish procedures for receiving the information at the time of the referendum vote specified in Section 78903. The request for information shall be in writing and shall be submitted to the secretary within 10 days following the receipt of the request.

(c) Any producer or vintner in Mendocino County whose name does not appear on the appropriate list may have his or her name placed on the list by filing with the secretary a signed statement identifying himself or herself as a producer or vintner. Failure to be on the list does not exempt the person from paying assessments, and does not invalidate any industry votes conducted pursuant to this chapter.

(d) Proponents and opponents of the commission may contact producers and vintners on the lists in a form and manner prescribed by the secretary if all expenses associated with those contacts are paid in advance.

78903. In determining whether this chapter is approved by producers, the secretary shall find both of the following:

(a) That at least 40 percent of the total number of producers from the list established by the secretary participated in the referendum, and that either one of the following has occurred:

(1) Sixty-five percent or more of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed a majority of the volume of winegrapes in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the producers who voted in the referendum.

(2) A majority of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed 65 percent or more of the volume of winegrapes in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the producers who voted in the referendum.

(b) That at least 40 percent of the total number of vintners from the list established by the secretary participated in the referendum, and that either one of the following has occurred:

(1) Sixty-five percent or more of the vintners who voted in the referendum voted in favor of this chapter, and the vintners so voting either acquired or processed their own production, or a combination thereof, that represents a majority of the volume of

winegrapes in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the vintners who voted in the referendum.

(2) A majority of the vintners who voted in the referendum voted in favor of this chapter, and the vintners so voting either acquired or processed their own production, or a combination thereof, that represents 65 percent or more of the volume of winegrapes in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the vintners who voted in the referendum.

78904. The secretary shall establish a period in which to conduct the referendum that shall not be less than 10 days nor more than 60 days in duration, and may prescribe additional procedures to conduct the referendum. If the initial period established is less than 60 days, the secretary may extend the period. However, the total referendum period may not exceed 60 days.

78905. Nonreceipt of a ballot shall not invalidate a referendum.

78906. The secretary shall certify and give notice of a favorable vote to all producers and vintners whose names and addresses are on file with the secretary if he or she finds that a favorable vote has been given as provided in this chapter. The secretary shall certify and declare this chapter inoperative if he or she finds that a favorable vote has not been given as provided in this chapter.

78907. Upon certification of the commission, the secretary shall call meetings of producers and vintners in Mendocino County for the purpose of nominating and electing persons to the commission, or in the alternative, may conduct the elections by mail ballot. All producers and vintners on the secretary's list shall be given written notice of the election meetings at least 15 days prior to the meeting date, or reasonable notice of elections by mail ballot and a reasonable time period in which to return ballots. In any election of producer and vintner members to the commission, only producers who are not also vintners may vote for producer members and alternate members, and only vintners may vote for vintner members and alternate members.

78908. Subsequent to the first members and alternate members elected to the commission, persons to be elected and

appointed to the commission shall be selected pursuant to the nomination and election procedures established by the commission with the concurrence of the secretary.

78909. (a) Prior to the implementation referendum conducted by the secretary, the proponents of the commission shall deposit with the secretary the amount that the secretary deems necessary to defray the expenses in creating the commission, including, but not limited to, preparing the necessary producer and vintner lists and conducting the referendum.

(b) Any funds remaining after paying expenses shall be returned to the proponents of the commission who deposited the funds with the secretary.

(c) The commission may reimburse the proponents of the commission for any funds deposited with the secretary that were used in carrying out this article and for any legal or other professional fees and costs incurred in establishing the commission.

Article 6. Assessments

78921. Prior to the beginning of each marketing season, or as soon as possible thereafter, the commission shall establish assessment rates for the marketing season, as follows:

(a) An annual assessment on producers of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000), as determined by the commission, based on the number of tons of winegrapes delivered to vintners during the preceding marketing season.

In addition, producers shall pay an assessment not less than one dollar (\$1) and not greater than twelve dollars (\$12) per ton of winegrapes delivered to vintners by producers. In the discretion of the commission, the producer assessment may be established as a percent of the gross dollar value received by producers from vintners for winegrapes rather than on a per ton basis. The assessment shall be established on a sliding scale that decreases the assessment by two dollars (\$2) per ton, or the percentage equivalent if the assessment is a percent of gross dollar value, for every 500 tons of winegrapes delivered to vintners by producers in excess of 1000 tons.

(b) An annual assessment on vintners of not less than three hundred fifty dollars (\$350) and not more than seven thousand five hundred dollars (\$7,500), as determined by the commission, based on the number of tons of winegrapes processed and marketed by vintners during the preceding marketing season.

In addition, vintners shall pay an assessment not less than one dollar (\$1) and not greater than twelve dollars (\$12) per ton of winegrapes processed by vintners for which an assessment has not already been paid by a producer. The assessment shall be established on a sliding scale that decreases the assessment by two dollars (\$2) per ton for every 500 tons of winegrapes processed by vintners in excess of 1000 tons.

(c) An assessment greater than the amount provided for in this section may not be charged unless and until a greater amount is approved by a majority of the commission and by eligible producers and vintners pursuant to the referendum procedures specified in Section 78903.

78923. This chapter shall not apply to winegrapes produced for a producer's home or ornamental use, or processed for a vintner's home use if an affidavit approved by the commission is filed by the producer or vintner containing information required by the commission. The commission shall review the affidavit, conduct any additional investigation it deems appropriate, and approve or deny the exemption. If granted, the exemption shall be valid for one marketing season and a new affidavit shall be filed and approved prior to each marketing season in order to retain an exemption from this chapter.

78924. (a) Every producer and vintner shall keep complete and accurate records of winegrapes produced, processed, and marketed, including, but not limited to, the number of tons of winegrapes delivered to or received by vintners, whether within or outside of Mendocino County, the names of the producers from which vintners receive winegrapes, and records related to the sale of winegrapes, wine, or winegrape products. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be preserved by producers and vintners for a period of five years and shall be offered and submitted for inspection at any reasonable time upon demand of the commission or its duly authorized agent.

(b) For purposes of this section and for any other section of this chapter that relates to recordkeeping or the collection and remittance of assessments from producers, including any section dealing with confidentiality of information received from vintners, the term “vintner” shall include persons in this state outside Mendocino County who otherwise meet the definition of vintner in Section 78839. Those persons shall not be required to pay the vintner assessment established by the commission, but shall collect and remit assessments and reports regarding winegrapes received that were produced in Mendocino County.

78925. (a) All proprietary and trade secret information obtained by the commission from producers and vintners shall be confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding involving this chapter. The Legislature finds and declares that this provision is required to ensure that producer and vintner proprietary and trade secret information shall not be disclosed.

(b) In addition, and notwithstanding any other provision of law, all proprietary or trade secret information developed or gathered pursuant to this chapter by the commission, or by the department on behalf of the commission, from any source is confidential, shall not be considered a public record as that term is defined in Section 6252 of the Government Code, and shall not be disclosed by the commission or the secretary except when required by a court order after a hearing in a judicial proceeding involving this chapter.

(c) Information on volume shipments, crop value, and any other related information that is required for reports to governmental agencies, financial reports to the commission, or aggregate sales and inventory information, and other information that give only totals, but excludes individual information, may be disclosed by the commission.

(d) The commission shall determine whether information is proprietary or trade secret and not subject to disclosure. If the commission denies a request for disclosure of this information, the commission shall provide written justification for its decision to the person requesting the information who may appeal the decision of the commission to the secretary.

78926. (a) Any assessment levied by the commission, pursuant to this chapter, is a personal debt of every person so

assessed and is due and payable in the time and manner prescribed by the commission. Failure of a vintner to collect the assessment from a producer shall not exempt the vintner from liability nor relieve the producer of the obligation to pay the assessment.

(b) When the producer or vintner is a corporation, general or limited partnership, or trust, all of the directors and officers of the corporation, all of the members and managers of the limited liability company, all of the general and limited partners in the partnership, and all of the trustees of the trust, in their capacity as individuals shall be included, and any liability for violating this chapter, including, but not limited to, failing to pay assessments or file required reports, shall also include identical liability upon each director and officer of the corporation, each member and manager of the limited liability company, each general and limited partner in the partnership, and each trustee of the trust. Title to the assessments, shall pass immediately to the commission. When collecting and remitting producer assessments, vintners shall hold the assessments in trust for the benefit of the commission until remitted in the time and manner specified by the commission.

78927. Any person who fails to file a return, or remit or pay any assessment within the time required by the commission shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due, and in addition, 1.5 percent interest per month on the unpaid balance.

78928. In addition to any other penalty imposed, the commission may require any person who fails to submit records or pay an assessment or related charge pursuant to this article to furnish and maintain a surety bond in a form and amount, and for a period of time, specified by the commission as assurance that all payments to the commission will be made when due.

Article 7. Violations

78941. It is unlawful for any person to do any of the following:

(a) Willfully render or furnish a false report, statement, or record required by the commission or to in any way to affect the

delivery, receipt, processing, or marketing of winegrapes with the intent to avoid payment of assessments.

(b) Fail to render or furnish a report, statement, or record required by the commission.

(c) When engaged in the production, delivery, processing, marketing, or other activities related to winegrapes, wine, or winegrape products, to fail or refuse to furnish the commission, or its duly authorized agents, information concerning the name and address of the persons to whom winegrapes were delivered or from whom winegrapes have been received, and the quantity delivered.

(d) Secrete, destroy, or alter records required to be maintained under this chapter.

78942. The commission shall establish procedures for the purpose of according individuals aggrieved by its action or determinations an informal hearing before the commission, or before a committee of the commission designated for that purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon petition filed with the appropriate superior court.

79843. (a) The commission may commence civil action and use all remedies provided in law or equity for the enforcement of this chapter, including, but not limited to, the collection of assessments, penalties, and interest, and for obtaining injunctive relief or specific performance regarding this chapter and the procedures adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any other procedure of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 484.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code

of Civil Procedure, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 of the Code of Civil Procedure is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding winegrapes, wine, or winegrape products until there is full compliance and satisfaction of the judgment.

(d) Upon a favorable judgment for the commission, it shall be entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

78944. Any action by the commission for any violation of this chapter shall be commenced within three years from the date of discovery of the alleged violation. Any action against the commission by any person shall be commenced within three years from the date of the act of which the person complains.

78945. The termination of this chapter shall not affect or waive any right, duty, obligation, or liability that has arisen or that may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

Article 8. Reapproval of Chapter

78961. Every five years, commencing with the 2011-2012 marketing season, the secretary shall hold a hearing to determine whether the operation of this chapter should be continued. If the secretary finds, after the hearing, that a substantial question exists among eligible persons regarding whether the operation of this chapter should be continued, the secretary shall submit the chapter to a reapproval referendum. If a reapproval referendum is required, the operation of this chapter shall continue in effect if the secretary finds that a majority of the eligible producers voting in the referendum voted in favor of continuing this chapter and a majority of the eligible vintners voting in the referendum voted

in favor of continuing this chapter. In finding whether the commission is continued pursuant to this article, the vote of any nonprofit agricultural cooperative marketing association that is authorized by its member to so vote, shall be considered to be the approval or rejection by the individual members thereof, or the individual stockholders therein. No bond or security shall be required for any referendum required by this chapter however, this shall not apply to advance deposit of funds required by the department to cover the actual cost of a referendum.

78962. If the secretary finds, after conducting a hearing pursuant to Section 78961, that no substantial question exists, or that a favorable vote has been given after a referendum, the secretary shall so certify and this chapter shall remain operative. If the secretary finds that a favorable vote has not been given after a referendum vote, he or she shall so certify and declare the operation of this chapter and the commission suspended upon the expiration of the then current marketing season. Thereupon, the operations of the committee shall be wound up and concluded and funds distributed in the manner provided in Section 78964.

78963. (a) Upon a finding by a two-thirds vote of the commission that this chapter has not tended to effectuate its declared purpose, the commission may recommend to the secretary that this chapter be suspended. However, any suspension shall not become effective until the expiration of the then current marketing season.

(b) Alternatively, the secretary may be petitioned to suspend this chapter. The petition must be signed by 2 percent of the producers, by number, who produced not less than 20 percent of the volume of winegrapes in the immediately preceding marketing season and 20 percent of the vintners, by number, who acquired not less than 20 percent of the volume of winegrapes in the immediately preceding marketing season.

(c) The secretary shall, upon receipt of the recommendation to suspend this chapter from the commission, and may, after holding a hearing on the petition to suspend this chapter, hold a referendum among the producers and vintners to determine if the commission shall be suspended. However, the secretary shall not hold a referendum as a result of the petition unless the petitioner shows by a preponderance of the evidence that this chapter has not tended to effectuate its declared purposes.

(d) The secretary shall establish a referendum period that shall not be less than 10 days nor more than 60 days in duration. The secretary may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the referendum period, the secretary shall tabulate the ballots filed during the period. If at least 40 percent of the total number of producers and 40 percent of the total number of vintners from the lists established by the secretary participate in the referendum, the secretary shall suspend this chapter if he or she finds either of the following has occurred:

(1) Sixty-five percent or more of the producers and vintners who voted in the referendum voted in favor of suspension, the producers so voting marketed the majority of the total quantity of winegrapes marketed in the preceding marketing season by all of the producers who participated in the referendum, and the vintners so voting acquired the majority of the total quantity of winegrapes acquired in the preceding marketing season by all of the vintners who participated in the referendum.

(2) A majority of the producers and vintners who voted in the referendum voted in favor of suspension, the producers so voting marketed 65 percent or more of the total quantity of winegrapes marketed in the preceding marketing season by all of the producers who voted in the referendum, and the vintners so voting acquired 65 percent or more of the total quantity of winegrapes acquired in the preceding marketing season by all of the vintners who voted in the referendum.

78964. After the effective date of suspension of this chapter, the operation of the commission shall be wound up and concluded and all moneys held by the commission not required to defray the expenses of concluding and terminating the operations of the committee shall be returned on a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing season. However, if the commission finds that the amounts returnable are such that it would be impractical or administratively burdensome to calculate and refund the moneys to the assessment payers, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid to another program conducted or used to fund activities related to the subject matter of this chapter.

78965. Upon suspension of this chapter, the commission shall mail a copy of the notice of suspension to all producers and vintners affected by the suspension whose names and addresses are on file.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2005

Governor